

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

CIVIL ACTION NO: 05-CV-40072 FDS

LANDWORKS CREATIONS, LLC

Plaintiff

v.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY and  
LOVETT-SILVERMAN CONSTRUCTION  
CONSULTANTS, INC.

Defendants

AMENDED COMPLAINT

1. Plaintiff, Landworks Creations, LLC (“the Plaintiff”) is a limited liability corporation with a principal place of business at 1500A Lafayette Road in Portsmouth in the State of New Hampshire.
2. Defendant, United States Fidelity & Guaranty Co./St. Paul’s Ins. Co (“USF & G”) is an insurance company with a place of business at 124 Grove Street, Franklin, Norfolk County, in the Commonwealth of Massachusetts.
3. Defendant, Lovett-Silverman Construction Consultants, Inc. (“L-S”) is a business entity with a principle place of business at 380 Townline Road, Haupauge, in the state of New York.
4. Jurisdiction may be had over L-S based upon the conducting of business by L-S in the Commonwealth of Massachusetts, and by nature of its torts within the Commonwealth of Massachusetts, and based upon the existence of offices within the Commonwealth of Massachusetts.

5. The Plaintiff entered into a contract with Standen Contracting Company, Inc. of North Dartmouth, Massachusetts.
6. The Plaintiff agreed to perform certain work for Standen Contracting Company, Inc. at the Shrewsbury Middle School (“the Project”)
7. Standen Contracting Company, Inc. was bonded by USF & G, United States Fidelity & Guaranty Co.
8. Standen Contracting Company, Inc. was unable to complete its work at the Project, and USF & G, pursuant to its obligations under a performance bond SW5041 assumed responsibility for completion of the Project in the stead of Standen Contracting Company, Inc.
9. The Plaintiff has performed its work under the Standen contract, and is owed funds by USF & G for the work performed.
10. USF & G has failed to pay the Plaintiff for work performed at the Project, to the extent of \$135,101.00.
11. At some point in the winter of 2004-2005, or in the spring of 2005, USF & G brought L-S to the Project to oversee completion of the Project.
12. L-S engaged in a scheme to reduce costs to USF & G on the Project by refusing to authorize payments to subcontractors, including the Plaintiff, by engaging in extortion toward the subcontractors, by strong-arming the subcontractors and by attempting to deny the subcontractors their rights under their contracts.
13. L-S also engaged in conduct that compelled subcontractors to file suit to receive payment, as part and parcel of a scheme to extort payments from subcontractors to USF & G through frivolous and fraudulent lawsuits.

14. In the words of Al Falango at L-S, there was an organized and on-going effort by L-S “to bang the subs...”

15. Landworks was a victim of L-S’s conduct.

COUNT I  
BREACH OF CONTRACT  
LANDWORKS v. USF & G

16. The Plaintiff restates allegations 1-16 and incorporates them by reference.

17. USF & G breached its contract by failing to perform its obligations to make payment under the bond between USF & G and Standen for the benefit of the Plaintiff..

18. As a result of this breach, the Plaintiff has been denied its expectancy and has otherwise been harmed.

COUNT II  
FRAUD  
LANDWORKS v. BOTH DEFENDANTS

19. The Plaintiff restates allegations 1-18 and incorporates them by reference.

20. The Defendants engaged in specific conduct which serve as fraud on the Plaintiff:

- a. the Defendants failed to effectuate payments of monies due and owing
- b. knowing that funds were due and owing, the Defendants engaged in conduct to deprive the Plaintiff of its funds, including exclusion of the Plaintiff from the Project without cause, failing to communicate with the Plaintiff to explain its conduct and failing to engage in good faith and fair dealing implied in each contract
- c. knowing that funds were due and owing, the Defendants devised and carried out a conspiracy to “bang” Landworks.

- d. knowing that the Plaintiff was not culpable for defects at the site, USF & G alone and with the support of L-S defamed the Plaintiff, making knowingly false statements in court papers to defend its failure to pay, and otherwise, by its conduct, implying defects in performance that harmed the Plaintiff in its business
  - e. knowing that the Plaintiff was not culpable for defects at the site, USF & G filed false statements with this Court, obstructed access to documents by thwarting the discovery process, asserted false affirmative defenses, manipulated the legal system by removing this matter to the federal court in the hope of slowing the progress of litigation, assisted in and filed a knowingly false counterclaim.
  - f. Knowing that the Plaintiff was not culpable for defects at the site, USF & G has engaged in a pattern and practice of hindering or delaying the resolution of this litigation.
21. This conduct, which constituted fraud on the Plaintiff, caused harm to the Plaintiff.

COUNT III  
TORTIOUS INTERFERENCE  
LANDWORKS v. BOTH DEFENDANTS

22. The Plaintiff restates allegations 1-21 and incorporates them by reference.
23. L-S, by carrying out its program of “banging” the subcontractors, did tortuously interfere in the contract between the Plaintiff and USF & G, for ulterior motives.
24. L-S was aware of the advantageous business relationship between the Plaintiff and USF & G.
25. L-S interfered in that relationship.
- As a result, the Plaintiff was harmed.

COUNT IV  
TORTIOUS INTERFERENCE  
LANDWORKS v. BOTH DEFENDANTS

26. The Plaintiff restates allegations 1-25 and incorporates them by reference.

27. L-S, by carrying out its program of “banging” the subcontractors, did tortuously interfere in the contract between the Plaintiff and USF & G, for ulterior motives.

28. L-S was aware of the advantageous business relationship between the Plaintiff and USF & G.

29. L-S interfered in that relationship.

As a result, the Plaintiff was harmed.

COUNT V  
CONVERSION  
LANDWORKS v. USF & G

30. The Plaintiff restates allegations 1-29 and incorporates them by reference.

31. USF & G received the benefit of the Plaintiff’s work, to a value of \$135,000.

32. USF & G kept that value.

33. USF & G converted the value of that work to its own benefit.

34. As a result of this conversion, the Plaintiff has been harmed.

COUNT VI  
VIOLATIONS OF c. 93A AND c. 176D  
LANDWORKS v. BOTH DEFENDANTS

35. The Plaintiff restates allegations 1-34

36. The Plaintiff and both defendants are involved in trade or commerce.

37. Defendant, USF & G failed to investigate a claim and make prompt payment.

Notwithstanding that liability was reasonably clear, USF & G has declined to make full settlement of the claim, without cause or excuse.

38. Defendant, L-S, set out to harm Landworks by denying it access to the Project and to funds due and owing.

39. The Plaintiff has made demand for its funds, a demand which has been ignored.

40. The pattern and practice of fraud, tortious interference and such conduct constitutes violations of c. 93A by L-S.

41. The pattern and practice by USF & G of refusing to make payments and to investigate violate both c. 93A and c. 176D.

42. As a result of this conduct, the Plaintiff has been harmed in its business.

COUNT VII  
VICARIOUS LIABILITY  
LANDWORKS v. USF & G

43. The Plaintiff restates allegations 1-42

44. To the extent that L-S was acting as an agent of USF & G, USF & G is liable for the torts of its agents.

45. The Plaintiff was harmed by the tortious conduct of L-S.

46. Defendant, USF & G is liable for that harm.

COUNT VIII  
NEGLIGENT SUPERVISION  
LANDWORKS v. USF & G

47. The Plaintiff restates allegations 1-46

48. To the extent that L-S was acting as an agent of USF & G, USF & G had a duty to supervise its agent to assure that the agent did not commit harm.

49. Defendant, USF & G breached that duty.

As a result of its negligence, the Plaintiff was harmed.

WHEREFORE, the Plaintiff respectfully requests that:

1. this Honorable Court enter judgment against USF & G as to all Counts in which it is named;
2. this Honorable Court enter judgment against L-S as to all Counts in which it is named
3. this Honorable Court award the Plaintiff the amount of \$135,101 together with interest and costs, trebled, along with attorney's fees
4. this Honorable Court award damages in an amount that will make the Plaintiff whole on the tort claims, trebled, along with attorney's fees; and
5. this Honorable Court award any further relief as deemed appropriate by this Court.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully Submitted,  
**Landworks Creations, LLC**  
By its attorney,

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Dated: June 20, 2006